

FILED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

2014 NOV 13 P 3:59

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

The Walton Family Foundation,
a Delaware Non-Profit Organization,
PO Box 2030
Bentonville, AR 72712

Plaintiff,

v.

waltonfamilyfoundation.com
a domain name,

Defendant in Rem.

Civil Action No.

1:14cv1504
JCC/TRJ

IN REM ANTICYBERSQUATTING COMPLAINT

Plaintiff The Walton Family Foundation, by the undersigned counsel, files this Complaint against Defendant Domain Name, <waltonfamilyfoundation.com>, *in rem*, and alleges as follows:

NATURE OF ACTION

1. The Walton Family Foundation (the “Foundation” or “The Walton Family Foundation”) brings this *in rem* action against <waltonfamilyfoundation.com> under the provisions of the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d), in order to take control of a domain name being used as part of a financial fraud by exploiting the good name of The Walton Family Foundation.

2. The fraud scheme is initiated with a “phishing” email announcing that recipients have been awarded a fake grant. The phishing email is a notorious fraud technique in which an

individual attempts to acquire personal and sensitive information through an electronic communication from a victim by appearing as a legitimate and trustworthy source. Preying on their hopes, the email promises victims a large financial grant and appears to come from an address at <www.waltonfamilyfoundation.com> and is falsely signed by The Walton Family Foundation by its actual Executive Director. The email directs victims to visit the website at the domain name <waltonfamilyfoundation.com>, which is registered to persons apparently operating out of Nevis, a small island in the Caribbean. Victims are directed to submit detailed financial information in order to claim the grant, thereby exposing themselves to identity theft.

3. The Walton Family Foundation files this *in rem* Complaint against the domain name in this District based on the presence of the domain name registry in its District.

4. The case under the Anticybersquatting Consumer Protection Act is overwhelming. The domain name, <waltonfamilyfoundation.com>, incorporates the Foundation's well-known common law mark in its entirety and was registered with bad faith intent to profit from the philanthropic and nationally renowned reputation of the Foundation and to deceive individuals into compliance with a fraudulent financial scheme. The <waltonfamilyfoundation.com> domain name is identical or confusingly similar to and dilutive of the mark of the Foundation.

PARTIES, JURISDICTION AND VENUE

5. Plaintiff The Walton Family Foundation is a United States non-profit organization incorporated under the laws of the State of Delaware. Its principal place of business is in Arkansas.

6. Defendant <waltonfamilyfoundation.com> is a domain name registered with the domain name registrar DNC Holdings, Inc. ("DNC Holdings"), which operates under rights granted by the registry operated by Verisign Global Registry Services, Inc. ("Verisign").

7. Pursuant to 15 U.S.C. § 1125(d)(2)(C)(i), a domain name is deemed to have its situs in the judicial district in which the domain name registrar, registry, or other domain name authority that registered or assigned the domain name is located. Verisign is the registry for all domain names ending in “.com,” and its principal place of business is located in this judicial district at 12061 Bluemont Way, Reston, Virginia 20190. As registry for the “.com” domain, Verisign maintains the root zone file which is compiled by all registrations in the “.com” top-level domain submitted by all authorized registrars. This file contains the domain names and their corresponding Internet Protocol (“IP”) numbers. Because Verisign controls the entries in the root zone file, it has the ability to change the IP number matched with a particular domain name. Thus, Verisign has effective control over the domain name at issue. Consequently, as expressly provided in the Anticybersquatting Consumer Protection Act, the situs of the <waltonfamilyfoundation.com> domain name is properly deemed to be in this judicial district.

8. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. §§ 1121 and 1125(d)(2)(A), and pursuant to 28 U.S.C. §§ 1331 and 1338.

9. Pursuant to 15 U.S.C. § 1125(d)(2)(A), the owner of a trademark may file an *in rem* civil action against a domain name in the judicial district where the domain name registry is located if: (a) the domain name violates any right of the owner of a trademark; and (b) the court finds that the owner is not able to obtain *in personam* jurisdiction over a person who would have been the defendant in a civil action.

10. The registrant of the domain name is DVPLMNT MARKETING, INC. The company is located at Hunkins Plaza Main Street, P.O. Box 556, Charlestown, Nevis, Saint Kitts and Nevis. Upon information and belief and after the exercise of due diligence, the Foundation has not been able to form a good faith belief that personal jurisdiction exists over the purported

owner of the site in Nevis. The registry for the domain name, however, is located in this judicial district. This action is, therefore, properly asserted *in rem* in this judicial district.

11. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

FACTS GIVING RISE TO THIS ACTION

Rights of Plaintiff in the Mark “THE WALTON FAMILY FOUNDATION”

12. Plaintiff The Walton Family Foundation is a nationally renowned, non-profit organization founded by Sam and Helen Walton, the founders of Walmart, that seeks to spark innovation and creativity in addressing critical social and environmental issues by awarding grants in the fields of art, education, marine and freshwater conservation.

13. The Foundation incorporated under the laws of Delaware in 1987 and has used the mark THE WALTON FAMILY FOUNDATION since its incorporation.

14. The Walton Family Foundation uses a logo on its website and in its official publications, such as its annual reports. The logo features three lines of text: the top line is the word “*The*”; the second line is the words “WALTON FAMILY”; and the last line is the word “FOUNDATION.” The three textual lines sit above a line of three rectangular blocks colored orange, green, and blue. *See* Ex. 1.

15. In 2013 alone, the Foundation awarded \$325 million in grants to approximately 1,250 organizations, awarding \$164.2 million in grants toward education reform throughout the United States; \$93.1 million toward freshwater and marine conservation focused on the Colorado River, Mississippi River, Gulf of Mexico and Gulf of California, as well as the Bird’s Head Seascape off the coast of Indonesia and the Eastern Tropical Pacific Seascape off the coast of Colombia, Costa Rica, Ecuador, and Panama; \$32.4 million to promote cultural, economic and

educational opportunities in the Arkansas and Mississippi Delta region; and \$33.6 million to support other, special interest projects throughout the United States.

16. The Walton Family Foundation is also well-known for its support of the arts. In 2010, the Foundation invested \$1.2 billion in the creation of the Crystal Bridges Museum of American Art in Bentonville, Arkansas, whose collection spans five centuries of American artwork. The museum also provides educational programs for children, young people and adults in the community.

17. Through 27 years of extensive use and widespread recognition of the Foundation's mark, the mark has become a distinctive identifier of The Walton Family Foundation. The Foundation has gained common law rights to the mark, which extend throughout the United States.

18. The Foundation currently uses the domain <waltonfamilyfoundation.org>, as its main website, where it provides information about the Foundation, reports on its priorities and annual giving, and allows prospective grantees to apply for grants. The Foundation registered its domain name in November 2005.

The <waltonfamilyfoundation.com> Domain Name

19. In order to discover the identity of a registrant of a domain name, an individual consults the "WhoIs" database, which is maintained by the registrars of domain names. The WhoIs system is an online repository of information associated with registered domain names and publicly displays domain name information, such as the registrar of the record and various contact information. According to the WhoIs data, the domain name <waltonfamilyfoundation.com> was registered through DNC Holdings, located at 3500 N. Causeway Blvd, Ste. 160 in Metairie, Louisiana.

20. According to the concerned registrar's Whois database, located at <<https://directnic.com/whois>>, the domain name <waltonfamilyfoundation.com> is registered to DVLPMNT MARKETING, INC., located at Hunkins Plaza Main Street, P.O. Box 556, Charlestown, Nevis, St. Kitts and Nevis. Nevis is a small island in the Caribbean Sea that forms part of the inner arc of the Leeward Islands chain of the West Indies, well outside the personal jurisdiction of this Court. The contact number is listed as +86 97 65 44 96, and the contact email address is listed as dvlpmntltd@gmail.com. See Ex. 2. DVLPMNT MARKETING, INC., is listed as the registrant, technical, administrative and billing contact for the domain name.

21. The registrant DVLPMNT MARKETING, INC., does not have any legitimate connection with, trademark for, or other intellectual property in the domain name. The registrant registered the domain name <waltonfamilyfoundation.com> on July 15, 2005, and is reported to be the registrant of *more than 47,000 domain names*.

22. The registrant has already been ordered to transfer domain names by arbitration panels for violating the marks of others, demonstrating its continuous pattern of blatant disregard of trademark rights. See *Loris Azzaro B.V. v. "Domain Adm'r" DVLPMNT MKTG., INC.*, D2014-0098 (WIPO Apr. 3, 2014), available at <http://www.wipo.int/amc/en/domains/search/text.jsp?case=D2014-0098> (ordering the disputed domain name transferred to the complainant because the disputed domain name is confusingly similar to the Complainant's well-known trademark, the respondent lacks a legitimate interest in the disputed domain name, and the domain name was registered and used in bad faith); *Chloe S.A.S. v. DVLPMNT Mktg. Inc.*, D2014-0039 (WIPO Feb. 24, 2014), available at <http://www.wipo.int/amc/en/domains/decisions/text/2014/d2014-0039.html> (same); *Starwood Hotels & Resorts Worldwide, Inc. and Westin Hotel Mgmt. L.P. v. DVLPMNT Mktg., Inc.*, D2014-0200 (WIPO Apr. 1, 2014), available at

<http://www.wipo.int/amc/en/domains/search/text.jsp?case=D2014-0200> (same); *Coach, Inc. v. DVLPMNT Mktg, Inc.*, D2014-0784 (WIPO June 28, 2014), available at <http://www.wipo.int/amc/en/domains/search/text.jsp?case=D2014-0784> (same); *Brookdale Senior Living Inc. v. Domain Adm'r / DVLPMNT MKTG., INC.*, FA1401001540964 (Nat'l Arb. Forum Mar. 13, 2014), available at <http://domains.adrforum.com/domains/decisions/1540964.htm> (same); *Mfrs. 'Agents Nat'l Ass'n v. Domain Adm'r / DVLPMNT MKTG., INC.*, FA1404001553434 (Nat'l Arb. Forum May 19, 2014), available at <http://domains.adrforum.com/domains/decisions/1553434.htm> (same); *Robertson-Ceco II Corp. d/b/a/ Ceco Building Sys. v. DVLPMNT MKTG., INC. / Domain Adm'r*, FA1406001564933 (Nat'l Arb. Forum July 24, 2014), available at <http://domains.adrforum.com/domains/decisions/1564933.htm> (same); *Taco John's Seasonings Ltd. P'ship v. DVLPMNT MKTG., INC. / Domain Adm'r*, FA1409001578087 (Nat'l Arb. Forum Oct. 1, 2014), available at <http://domains.adrforum.com/domains/decisions/1578087.htm> (same).

23. The <www.waltonfamilyfoundation.com> site is the central component of a phishing scam. In this scheme, an unknown individual sends out phishing emails from an email address at the website operated at that domain name. These emails go to (perhaps random) recipients, falsely under the name of The Walton Family Foundation's Executive Director Buddy D. Philpot from the email address info@waltonfamilyfoundation.com. The emails describe the Foundation and inform individuals that the Foundation's "random list picker" has selected their email address as a winner of an "annually social business support give away." The email instructs recipients to respond so that they can be sent guidance on "how to receive the fund." See Ex. 3.

24. Upon replying to the original email, individuals receive another fraudulent email, also sent under Buddy D. Philpot's name from info@waltonfamilyfoundation.com – again using

the website's ability to run an email service as part of their fraud. That email advises individuals that they will receive a grant of \$5 million from The Walton Family Foundation, and requests their personal information. *See* Ex. 4.

25. An Internet user entering <waltonfamilyfoundation.com> finds a web page that displays links with misleading titles such as "apply for grants," "grants and scholarships," and "charitable foundation." *See* Ex. 5. Each link leads to larger lists of links to third-party commercial websites such as commercial vendors, providers of legal services, charities and search engines. *See* Ex. 6. The page also includes a search bar that provides links to additional commercial websites as a result of searches.

26. The Walton Family Foundation is receiving between multiple calls each day and numerous emails from members of the public asking if the Foundation awarded them a grant or notifying the Foundation that they received the fraudulent emails. Members of the press have also contacted The Walton Family Foundation to inquire about the emails.

27. The Atlantic Philanthropies, a foundation focused on supporting disadvantaged and vulnerable populations, has also been the victim of a similar phishing email scam. Victims of the scam are sent an email from the Atlantic Philanthropies founder Chuck Feeney and its President and CEO, Christopher G. Oechsli, among others, notifying them that they have been chosen to receive a grant from the Philanthropies. A follow-up email requests the victims' personal information. *See* Ex. 7.

28. Plaintiff The Walton Family Foundation has no association, business, or license relationship whatsoever with the registrant of <waltonfamilyfoundation.com>. The contested domain name is confusingly similar to the legal and nationally recognized mark of the Foundation. The registrant has absolutely no legitimate interest in the domain name and has

registered the site in complete bad faith with an intent to profit from its practiced fraud and deception.

VIOLATION OF THE ANTICYBERSQUATTING CONSUMER PROTECTION ACT

29. Plaintiff incorporates herein and realleges, as if fully set forth in this paragraph, the allegations of paragraphs 1-28, inclusive.

30. The registrant of the site at issue has registered, trafficked in, and used in interstate commerce a domain name which is identical or confusingly similar to and dilutive of the famous mark THE WALTON FAMILY FOUNDATION.

31. The <waltonfamilyfoundation.com> domain name has been registered without authorization from the Foundation, and upon information and belief, with the bad faith intent of profiting from the mark of The Walton Family Foundation by misleading or deceiving the public into believing that the Foundation is associated with, affiliated with, sponsors, or endorses the website related to the <waltonfamilyfoundation.com> domain name, or with the bad faith intent of diverting Internet traffic looking for websites of the Foundation.

32. The aforesaid actions constitute cyberpiracy in violation of Section 43(d) of the Trademark Act of 1946, 15 U.S.C. § 1125(d), also known as the Anticybersquatting Consumer Protection Act of 1999.

33. The unauthorized registration and use of the <waltonfamilyfoundation.com> domain name has caused, and unless and until cancelled or transferred to the Foundation, will continue to cause irreparable harm to the Foundation and to the goodwill associated with their distinctive mark. The Foundation has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, by virtue of the unlawful conduct alleged herein, The Walton Family Foundation respectfully prays that this Court:

- A. enter judgment that the <waltonfamilyfoundation.com> domain name as registered and used violates the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d);
- B. issue a preliminary and permanent injunction ordering the transfer of the <waltonfamilyfoundation.com> domain name to Plaintiff The Walton Family Foundation, and
- C. award the Foundation such other, different, or additional relief as the Court deems just and equitable.

Respectfully submitted,



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